SUPREME COURT, U. S.
FILED
NOV 14 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 640

RAILWAY LABOR EXECUTIVES' ASSOCIATION and BROTHERHOOD OF LOCOMOTIVE ENGINEERS,

Appellants,

—v.—

UNITED STATES OF AMERICA, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

MOTION TO DISMISS OF APPELLEES SEABOARD AIR LINE RAILROAD COMPANY, ATLANTIC COAST LINE RAILROAD COMPANY, THE ATLANTIC COAST LINE COMPANY, AND MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY

PAUL A. PORTER
DENNIS G. LYONS
1229 Nineteenth Street, N.W.
Washington, D. C. 20036

Attorneys for Appellees Seaboard Air Line Railroad Company, Atlantic Coast Line Railroad Company, The Atlantic Coast Line Company, and Mercantile-Safe Deposit and Trust Company

Of Counsel:

HAROLD J. GALLAGHER
WALTER H. BROWN, JR.
WILLKIE FARR GALLAGHER WALTON & FITZ GIBBON
New York, New York

RICHARD A. HOLLANDER
Richmond, Virginia

PRIME F. OSBORN, III
JOHN W. WELDON
PHIL C. BEVERLY
Jacksonville, Florida

EDWIN H. BURGESS
Baltimore, Maryland

ARNOLD & PORTER
Washington, D. C.

November, 1966

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 640

RAILWAY LABOR EXECUTIVES' ASSOCIATION and BROTHERHOOD OF LOCOMOTIVE ENGINEERS,

Appellants,

—v.—

UNITED STATES OF AMERICA, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

MOTION TO DISMISS OF APPELLEES SEABOARD AIR LINE RAILROAD COMPANY, ATLANTIC COAST LINE RAILROAD COMPANY, THE ATLANTIC COAST LINE COMPANY, AND MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY

Appellees Seaboard Air Line Railroad Company ("Seaboard"), Atlantic Coast Line Railroad Company ("Coast Line"), The Atlantic Coast Line Company, and Mercantile-Safe Deposit and Trust Company, pursuant to Rule 16 of the Rules of this Court, move that the appeal in No. 640 be dismissed, on the grounds that the differences between the Seaboard and Coast Line (the railroads proposing to merge) and the appellants as to employee protection have been disposed of by agreement between the appellants, on the one hand, and Seaboard and Coast Line, on the other.

The present appeal is an appeal by the Railway Labor Executives' Association ("RLEA"), with whom 23 of the standard railway labor organizations are affiliated, and the Brotherhood of Locomotive Engineers ("Engineers") (the other standard railway labor organization), from a judgment of the District Court for the Middle District of Florida entered on June 8, 1966. That judgment upheld the Interstate Commerce Commission's conditional approval of a merger between Seaboard and Coast Line. In the Commission's conditional approval, it imposed certain labor-protective conditions under Section 5(2)(f) of the Interstate Commerce Act, which requires the imposition of labor-protective conditions upon various transactions approved by the Commission. The RLEA and Engineers contested, before the District Court, the adequacy of the labor-protective conditions and their consistency with the requirements of Section 5(2)(f). By their appeal in No. 640, they sought review by this Court on appeal of the District Court's adverse decision on their contentions as to the labor-protective conditions. RLEA and Engineers, in their appeal in No. 640, however, did not raise any questions, apart from the labor-protective issues, concerning the merger.[1]

On November 3, 1966, in connection with an application for an extension of time, we advised that on that date an overall negotiated settlement had been entered into between Seaboard and Coast Line and the organizations represented by the RLEA respecting the labor-protective provisions to govern upon the consummation of the merger. (*Cf.* final sentence, Section 5(2)(f)). We then advised that

[1] Certain other appellants, in Nos. 638, 639 and 641, have raised other questions concerning the merger. We filed, on November 7, 1966, a Motion to Affirm with respect to the appeals in Nos. 638, 639 and 641.

there was a substantial expectation that a similar settlement would be reached with the Engineers within a few days.

Such a settlement has now been reached in principle between Seaboard and Coast Line, on the one hand, and Engineers, on the other, and we have been advised on Engineers' behalf that they now view the differences between them and the Seaboard and Coast Line as having been disposed of in the light of these circumstances. We have also been advised on behalf of RLEA and Engineers that they will interpose no objection to the granting of a motion to dismiss their appeal, made by us, on the grounds that the parties by mutual agreement have disposed of their differences as to employee protection.

Accordingly, since the Coast Line and Seaboard and the appellants have disposed of their differences as to employee protection by agreement, we respectfully submit that it would be appropriate for the Court to enter an order dismissing the appeal in No. 640.

CONCLUSION

For the reasons stated, the appeal in No. 640 should be dismissed.

Respectfully submitted,

PAUL A. PORTER
DENNIS G. LYONS
1229 Nineteenth Street, N.W.
Washington, D. C. 20036

Attorneys for Appellees Seaboard Air Line Railroad Company, Atlantic Coast Line Railroad Company, The Atlantic Coast Line Company, and Mercantile-Safe Deposit and Trust Company

Of Counsel:

HAROLD J. GALLAGHER
WALTER H. BROWN, JR.
WILLKIE FARR GALLAGHER WALTON & FITZ GIBBON
New York, New York

RICHARD A. HOLLANDER
Richmond, Virginia

PRIME F. OSBORN, III
JOHN W. WELDON
PHIL C. BEVERLY
Jacksonville, Florida

EDWIN H. BURGESS
Baltimore, Maryland

ARNOLD & PORTER
Washington, D. C.

November, 1966